

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

BLACKFORD INVESTIGATIONS &  
CONSULTING SERVICES,

Plaintiff and Respondent,

v.

KIM SEIDENBERG,

Defendant and Appellant.

G040744

(Super. Ct. No. 07CC12005)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Frederick P. Horn, Judge. Reversed and remanded with directions pursuant to Code of Civil Procedure section 128, subdivision (a)(8).

Law Office of Jerry L. Steering and Jerry L. Steering for Defendant and Appellant.

Kevin R. Riva for Plaintiff and Respondent.

\* \* \*

## THE COURT:<sup>\*</sup>

A private investigator obtained a default judgment against his former client for fees incurred in an asset investigation and surveillance in a divorce action. The judgment included a \$100,000 award for punitive damages, based on the investigator's belief that the client never intended to pay more than the amount of the retainer.

While this case was pending on appeal, the parties participated in the court's judicial settlement program, and reached a settlement. The parties have filed a stipulated request to reverse the default judgment.

We gladly oblige. The settlement meets the criteria in Code of Civil Procedure section 128, subdivision (a)(8). It furthers important judicial policies of dispute resolution, including avoiding defaults and achieving settlements. There are serious questions whether the default judgment in question, which included a punitive award, would have withstood appellate scrutiny.

## I

In May 2007, Kim Seidenberg hired Paul Blackford, a private investigator, to perform surveillance, "special operations" and a forensic accounting in conjunction with a divorce. Seidenberg signed a written contract, and paid Blackford a \$3,000 retainer.

Blackford sued Seidenberg in November 2007. The complaint contained causes of action for breach of contract and fraud. Blackford sought \$43,533 for money due on the contract, and \$100,000 in punitive damages.

Seidenberg never answered the complaint, and Blackford filed a request for entry of a default and a default judgment. Blackford filed a declaration in support of the default judgment to support his claim for fees and expenses. Blackford further declared, "[Seidenberg] has not made any payment since [the initial \$3,000 retainer] despite

---

<sup>\*</sup> Before Rylaarsdam, Acting P. J., Moore, J., and Fybel, J.

repeated demands. It is clear that [Seidenberg] never intended to pay for any of the services performed by my firm.” There was no evidence why Seidenberg’s alleged fraud was “clear.” Neither was any evidence offered regarding Seidenberg’s net worth, or her ability to pay.

Based solely on Blackford’s declaration, the trial court entered a default judgment for the requested amounts, including punitive damages.

## II

We are required by statute to make specific findings on a case-by-case basis before accepting and confirming the parties’ stipulation for reversal of a judgment. (See *Union Bank of California v. Braille Inst. of America, Inc.* (2001) 92 Cal.App.4th 1324, 1328 (*Union Bank*); *In re Rashad H.* (2000) 78 Cal.App.4th 376, 381.) The predicate findings are: “(A) There is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal. [¶] (B) The reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement.” (Code Civ. Proc., § 128, subd. (a)(8).) Pursuant to our local practice, the parties submitted a joint declaration to explain why a stipulated reversal complies with the statutory requirements. (Ct. App., Fourth Dist., Div. Three, Internal Operating Practices & Proc., V.C.2., Settlement Notices & Stipulations.)

We have examined the appellate record and the joint declaration, and conclude that the statutory criteria are present.

There is no reasonable possibility that the interests of nonparties or the public will be adversely affected by a stipulated reversal. This matter deals with a routine breach-of-contract dispute which was never litigated. California has a strong public policy favoring trial or other disposition of legal actions on the merits; the primary goals of the legal system are ““the resolution of our citizens’ disputes and the administration of justice.”” (Fasuyi v. Permatex, Inc. (2008) 167 Cal.App.4th 681, 701.)

The likelihood of reversible error is relevant, but not essential, to our determination to accept the stipulation. (*Union Bank, supra*, 92 Cal.App.4th at pp. 1330-1331.) Seidenberg has a meritorious appeal. Default judgments cannot be based on speculative evidence of damages that are unsupported by sufficient evidence. (*Scognamillo v. Herrick* (2003) 106 Cal.App.4th 1139, 1151 [reversing default judgment in automobile accident case where the evidence that plaintiff would require a second surgery “could hardly have been couched in more speculative terms”].)

Blackford’s surmise that Seidenberg never intended to pay him does not rise to the level of substantial evidence. It cannot support a punitive claim. “Accordingly, when the cause of action is based on an agreement between the parties, rather than ex delicto obligations arising by law, punitive damages are ordinarily not recoverable, even where the defendant has violated his or her obligations maliciously or in bad faith. [Citation.]” (*Brewer v. Premier Golf Properties* (2008) 168 Cal.App.4th 1243, 1252; see also *Cates Construction, Inc. v. Talbot Partners* (1999) 21 Cal.4th 28, 61.) Further, there was no evidence offered about Seidenberg’s financial condition. (See *Adams v. Murakami* (1991) 54 Cal.3d 105, 111; *Baxter v. Peterson* (2007) 150 Cal.App.4th 673, 679.)

Reversal will not have an adverse impact upon the public interest. There are no important rights, or unfair, illegal or corrupt practices, or torts affecting a significant number of persons. If anything, the public interest is served by encouraging cooperation, civility and professionalism in the resolution of disputes. “When lawyers responsibly settle litigation, public trust in the courts is advanced.” (*Union Bank, supra*, 92 Cal.App.4th at p. 1331.) We commend the attorneys’ efforts in this matter. Far from diminishing the incentives for pretrial settlement at the trial court level, parties may be more inclined to settle when they realize that they cannot necessarily secure a default judgment based on dubious evidentiary showings.

The judgment is reversed pursuant to the parties' stipulation. Except as otherwise provided in their settlement agreement, the parties shall bear their own costs on appeal.